The Law of Interrogations and *Miranda v. Arizona*

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You Have A Right to Remain Silent….

- *Miranda v. Arizona*, 384 U.S. 436 (1966), created a complex structure of rules that the Supreme Court is still tinkering with today, more than 45 years later.
- The basic thinking of *Miranda* is to create a procedural set of rights in custodial interrogation to balance out the rights of criminal defendants.

Before *Miranda*

- Before *Miranda*, there were no rights in "the box," as the Fifth Amendment doesn't apply unless statements are legally compelled.
- The creation of large police forces led to use of the "Third Degree" that *Miranda* tried to stop.
- The standard for admissibility of confessions was vague: Voluntariness, from the common law. Supreme Court struggled to identify when confessions were voluntary.
- Sixth Amendment right not to be interviewed without lawyer after being charged with a crime established in Massiah v. United States, 377 U.S. 201, (1964).

Big Right, then Chipping Away

- *Miranda* was among the boldest of the Warren Court's cases: It created an entirely new framework of interrogation rules.
- But later Justices are not particularly comfortable with it.
  - Scalia and Thomas would love to overturn it entirely. See Dickerson v. United States, 530 U.S. 428 (2000) (Scalia, J., dissenting).
  - Kennedy, Roberts, and Alito construe it narrowly – as did the trio of Kennedy, Rehnquist, O'Connor before them.
  - Decisions chip away at the edifice, resulting in a framework that is partly what the Warren Court intended in 1966 and partly new.

Basic Structure

- When a suspect is in custody, and is subject to interrogation, statements made are admissible only of the suspect was informed of his rights and waived those rights.
- Also creates "downstream" Miranda rights: If a suspect affirmatively asserts his right to counsel or right to remain silent, the interview must stop.
- Lawyer must be made available, appointed if the suspect cannot afford lawyer .
- Established as a way to protect the Fifth Amendment right against self-incrimination.

Custody

- Miranda rights only apply when a suspect is in "custody." Two requirements:
- 1) Whether "a reasonable person in the suspect's position would understand his freedom to terminate questioning and leave." J.D.B. v. North Carolina, 131 S.Ct. 2394 (2012) (Sotomayor, J.).
- 2) "Whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in Miranda." Howes v. Fields, 132 S.Ct. 1181 (2012) (defendant taken from jail cell and escorted to interview room not in custody).

Interrogation

- "Express questioning" or "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." Rhode Island v. Innis, 446 U.S. 291 (1980).
- Has to resemble a real interrogation. Discussing what a shame it would be if a handicapped kid was hurt by the lost gun doesn't count, as no one would expect a murderer to confess in response to that.

What Warnings Are Required?

- Have to be given, even if (even though?) the suspect knows them.
- The first two are easy: You have a right to remain silent; anything you say can and will be used against you in a court of law.
- The next two are sometimes given erroneously: Should be that you have a right to an attorney who will be present at any questioning, and if you cannot afford one, one will be appointed for you.
- But some deviations allowed. See, e.g., Florida v. Powell, 130 S.Ct. 1195 (2010) (deviations allowed if "reasonably conveyed" substance of the warnings).

Waiver of Rights

- Defendant must waive rights before any answers to questions will be permitted in court.
- About 80% waive their rights. (Why?)
- Police usually obtain a formal waiver.
- But, if a defendant is given the warnings, appears to understand the warnings, and then decides to speak, the decision to speak will be read as an implied waiver of the rights. See Berghuis v. Thompkins, 130 S.Ct. 2250 (2010).

Public Safety & Routine Booking Exceptions

- Public safety exception.
  - New York v. Quarles, 467 U.S. 649 (1984)
  - Miranda need not be strictly followed in situations "in which police officers ask questions reasonably prompted by a concern for the public safety."
  - "Where's the gun?"
- Routine booking exception.
  - Pennsylvania v. Muniz, 496 U.S. 582 (1990).
  - Police can ask for "biographical data necessary to complete booking or pretrial services" without complying with Miranda.

Downstream *Miranda*

- A defendant who has been given warnings, and either chooses to waive his rights or has not decided what to do, can later on at any time affirmative assert his rights to remain silent and/or right to counsel.
- In many ways, these are the most powerful Miranda rights – and strangely, you need to be pretty savvy even to know about them!
- Two different rights: The right to remain silent (not discuss the case) and the right to counsel (consult with a lawyer). Different rules for the different rights.

Rights Must be Unambiguously Asserted

- Davis v. United States, 512 U.S. 452 (1994):
  - "The suspect must unambiguously request counsel. . . . Although a suspect need not speak with the discrimination of an Oxford don, he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney."
  - "Maybe I should talk to a lawyer" not enough.
  - Bodie in *The Wire*: "Lawyer!"
- *Berghuis v. Thompkins* holds that the same standard applies to assertions of the right to remain silent (which sounds like an oxymoron, doesn't it?)

Interview Must Cease, Unless Suspect Reinitiates

- When a defendant asserts his rights, the interview must cease. Very powerful way to stop the interrogation!
- However, the defendant can "un-assert" his rights if he reinitiates questioning. The idea is that if the defendant himself changes his mind, he can reset his rights and go back to his status before the assertion of rights.
- Oregon v. Bradshaw, 462 U.S. 1039 (1983) (4-1-4) (with the plurality implausibly interpreting "what's going to happen to me now?" as expressing "a willingness and desire" for a generalized discussion of his case).

How Long Does Assertion of Rights Last?

- (1) Right to counsel.
  - Lasts as long as the person is in custody, even if he has talked to an attorney, see Edwards v. Arizona, 451 U.S. 477 (1991).
  - Plus, it lasts another 14 days after the suspect is *out* of custody. See Maryland v. Shatzer, 130 S.Ct. 121 (2010) (Scalia, J.).

- (2) Right to remain silent.
  - Police must "respect" and "scrupulously honor" the assertion of the right, but they can come back at another time in another setting and try again. See Michigan v. Mosley, 423 U.S. 96 (1975).
  - Lasts less time than assertion of the right to counsel: In Mosely, police allowed to question suspect about a different crime in a different place just two hours later.

Miranda Remedies

- Suppression of statement obtained is the usual remedy, but there are several limitations on that remedy.
- Exclusionary remedy is limited to statements obtained, and does not cover physical evidence recovered as fruits of the statement.
  - See United States v. Patane, 542 U.S. 630 (2004) (5-4)(because Miranda is only a prophylactic set of rules protecting the Fifth Amendment, and the Fifth Amendment is about statements, not necessary to suppress physical fruits to protect the core Fifth Amendment right).
- There is no civil remedy for a Miranda violation.
  - See Chavez v. Martinez, 538 U.S. 760 (2003) (because Miranda rules are prophylactic on top of Fifth Amendment rights, not rights themselves, "failure to read Miranda warnings [before obtaining an incriminating statement] did not violate [his] constitutional rights and cannot be grounds for a § 1983 action").

Two-Stage Confessions

- What if the police get a partial confession after failing to read a suspect his Miranda rights, but then read the suspect his rights, get a waiver, and get a second confession?
- Is the second confession admissible because it follows the waiver, or suppressed because it is the "fruit" of the first suppressed statement?
- Ordinarily, the second confession is admissible. See Oregon v. Elstad, 470 U.S. 298 (1985) (no fruit-of-the-poisonous-tree analysis in Miranda setting).

Intentional Two-Step

- *But*, the second statement may be suppressed under Missouri v. Seibert, 542 U.S. 600 (2004), in some circumstances:
- Justice's Kennedy Test: If it was the product of an intentional two stage technique (that is, intentionally getting a suppressed statement in order to get a later allowed statement) and the subject of the questioning is the same and there were no "curative measures" that make clear the first statement is inadmissible.
- Justice Souter test: If the Miranda warnings delivered mid-stream were not effective in context.
- Most circuits have said that Kennedy's opinion is controlling, although the First Circuit has not yet decided the question. See United States v. Widi, 684 F.3d 216 (1st Cir. 2012).

Summary

- The Supreme Court has retained the core of Miranda, although it has adopted a significantly narrower version of the test than the original decision in 1966 suggested.
- Lots of cases at nearly every stage of this complex structure of rules.
- Rights only apply custodial interrogation
- Downstream Miranda rights are as important – and maybe more important – as the warning and waiver procedure.
- Remedies are more limited than in other areas of criminal procedure.
- Questions?